

DECISIONS IN BRIEF:

The following are a variety of GAO and court decisions involving the use of simplified acquisition procedures that contracting officers and buyers should review and use for local training where applicable. Implementation of any of the decisions should be discussed with your local Office of General Counsel.

1. **Simplified acquisitions.** In a procurement using simplified acquisition procedures, restriction of competition to a specific make and model of a helicopter was reasonable because standardization of the government's fleet was necessary for safety reasons. A protester unsuccessfully challenged the restriction on the basis that its helicopter, though not the brand name requested in the solicitation, would meet the government's needs. (*American Eurocopter Corp.*, 15 CGEN ¶110,722)

American Eurocopter Corporation (AEC) protests the restriction of request for quotations (RFQ) No. DE-RQ-65-99-WA-12296, issued by the Western Area Power Administration (WAPA), for a Bell Helicopter Model 407. AEC contends that restricting the competition to a brand name is unreasonable because AEC's helicopter will meet all the agency's needs.

We deny the protest.

At the outset, we disagree with the protester that WAPA was required to solicit full and open competition in conducting this procurement. As noted above, the RFQ was issued pursuant to FAR subpart 13.5, which allows simplified acquisition procedures for the acquisition of commercial items less than \$5 million. 41 U.S.C. §253(g)(1)(B) (Supp. III 1997). Procurements conducted under simplified acquisition procedures are specifically exempt from the statutory requirement to obtain full and open competition; instead, contracting officers are required to promote competition to the maximum extent practicable. 41 U.S.C. §253(g)(4) (1994); FAR §§13.104, 13.501(a).

Accordingly, the issue here is whether the agency in preparing the RFQ specified its needs and solicited quotes in a manner designed to obtain competition to the maximum extent practicable and included restrictive provisions only to the extent necessary to satisfy the agency's needs. In reviewing a challenge to the agency's determination of its needs, we defer to the contracting agency, which is most familiar with its needs and how best to fulfill them, and we will question that determination only where it is shown to have no reasonable basis. *Corbin Superior*

Composites, Inc., B-242394, Apr. 19, 1991, 91-1 CPD ¶389 at 5. In this regard, restricting a procurement to a particular manufacturer's product is not improper where the agency establishes that the restriction is necessary to satisfy its needs. See *Lenderking Metal Prods.*, B-252035, B-252036, May 18, 1993, 93-1 CPD ¶393 at 2; *Chi Corp.*, B-224019, Dec. 3, 1986, 86-2 CPD ¶634 at 3. W&W Logistics protests the issuance of a purchase order to Alfred Conhagen Co., under request for quotations (RFQ) No. SPO760-99-Q-1215, issued by the Defense Logistics Agency (DLA), for a quantity of shaft seal assembly kits.

We deny the protest.

The RFQ product item description identified several approved manufacturers of the part, including Conhagen. ¹ RFQ at 2. The agency sent the RFQ via facsimile to potential vendors, including the protester and Conhagen. Contracting Officer's Report ¶4.b. The agency received five quotes and selected Conhagen based on its lowest-priced quote. *Id.* ¶4.c, 4.e. The agency reports that it did not receive a quote from the protester. *Id.* ¶¶4.d, 7.

W&W alleges that it submitted a quote via facsimile transmission at a price lower than Conhagen's. To establish the facsimile transmission, W&W has furnished a copy of its quote, above which appears a facsimile transmission report indicating that the protester established a connection with the agency's facsimile machine. Notwithstanding this evidence, the contracting officer states that the agency has no record of receiving the protester's quote. *Id.*

2. Facsimile Transmission Report Was Inadequate Evidence of Receipt

A protester failed to establish that the government received its quotation because the only evidence offered in support of its contention was a facsimile transmission report. The request for quotations was sent to several approved manufacturers of shaft seal assembly kits. According to the government, five quotes were received, none of which were from the protester. After an award was made to another firm, the protester filed the instant protest, alleging that it should have received the award because it submitted a lower-priced quote.

Protester's Control

The Comptroller General denied the protest, however, concluding that the protester's facsimile transmission report was inadequate to establish receipt by the government. Vendors have a duty to see that their quotes reach the designated government office on time, and those relying on facsimile transmissions assume the risk of nonreceipt by the government. Moreover, even if the transmission record were considered as evidence, this was not sufficient to overcome the government's denial of receipt. According to the Comptroller General, the transmission record was in the protester's control, and therefore, could have been created or altered to support the protester's contention. (*W&W Logistics*, 15 CGEN ¶110,728)

Vendors have a duty to see that their quotes reach the designated government office on time, and vendors relying on facsimile transmissions to file documents assume the risk of nonreceipt by the agency. See *Comspace Corp.*, B-277540, Oct. 24, 1997, 97-2 CPD ¶111 at 3. Here, the contracting officer denies that the agency received the protester's quote, and the protester's facsimile transmission report is inadequate, by itself, to establish receipt by the agency. This is so because our Office does not regard a transmission record within the protester's control, such as this one, to be definitive evidence of transmission, since such a record can be created or altered to support a protester's contention. See *Southern CAD/CAM*, B-244745, Nov. 13, 1991, 91-2 CPD ¶453 at 3. In addition, even accepting the protester's transmission record as evidence that it actually transmitted its quote, this alone does not establish that the agency received the quote, since DLA denies receipt and there is no other evidence that the agency actually received the quote. See *The Microscope Co.*, B-257015, Aug. 8, 1994, 94-2 CPD ¶157 at 2. Accordingly, we find that the protester has not established that the agency received its quote. ²

The protest is denied.

3. Request for quotations. An acquisition under the Federal Supply Schedule program was not defective for failure to follow the procedures set out in Federal Acquisition Regulation Part 15 because, although the government requested detailed information from bidders, this did not transform the acquisition into a negotiated procurement. (*Ellsworth Associates, Inc. v. U.S.*, FedCl, 44 CCF ¶77,564)

United States Court of Federal Claims No. 99-790C, November 22, 1999

Federal Supply Schedules--Request for Quotations--Evaluation Factors.

An acquisition under the Federal Supply Schedule program was not defective for failure to follow the procedures set out in Federal Acquisition Regulation Part 15 because, although the government requested detailed information from bidders, this did not transform the acquisition into a negotiated procurement. The solicitation was for a child care information system technical assistance project. The protester argued that once the government asked detailed questions regarding manpower and qualifications it was then obligated to follow the more complex solicitation process set out in Part 15, rather than the simplified process set out in FAR Part 8. However, there is nothing that prohibits the government from seeking detailed information as a part of an FSS procurement.

4. Simplified acquisitions. The government reasonably issued a contract for one year on a sole-source basis because the project was undergoing considerable change. A protester argued that the government should have issued the procurement for one base year and four one-year options, but chose to truncate the procurement into smaller one-year awards in order to circumvent the \$3 million dollar threshold requiring competition. (*AudioCARE Systems*, 15 CGEN ¶110,743)

Protest that agency did not provide protester a fair opportunity to compete under simplified acquisition for automated patient appointment reminder system is denied where, although the agency considered an inappropriate price comparison, the record shows that the agency evaluated all information received from the vendors and, with full understanding of the actual pricing, reasonably determined that the selected system represented the best value to the government. *AudioCARE Systems* protests the issuance of delivery order No. DADA09-99-F-0638 by the Department of the Army to Advanced Scientific Supply for a Solvetech System automated patient appointment reminder system for the Great Plains Regional Medical Command under simplified acquisition procedures. *AudioCARE* contends that agency did not provide it a fair opportunity to compete for the order.

We deny the protest.

Where, as here, simplified acquisition procedures are used, contracting agencies may properly use innovative approaches so as to award contracts in the manner that is most suitable, efficient and economical in the circumstances of each acquisition. FAR §13.003(g), (h); *Cromartie and Breakfield*, B-279859, July 27, 1998, 98-2 CPD ¶32 at 2. Our Office reviews allegations of improper agency actions in conducting simplified acquisitions to ensure that the procurements are conducted consistent with the concern for fair and equitable competition that is inherent in any federal procurement. *Huntington Valley Indus.*, B-272321, Sept. 27, 1996, 96-2 CPD ¶126 at 2.

Nonetheless, based on the record here, the selection of the Solveteck system is unobjectionable. The agency solicited quotes orally, which is allowed under FAR §13.106-1(c), and while vendors were told that price would be the predominant consideration in the selection decision, vendors were also advised that other factors, such as life-cycle costs, standardization and ease of data extraction would also be considered. Telephone Hearing, Jan. 21, 2000. After evaluating price and technical considerations, the agency reasonably determined that the Solveteck system represented the better value.

The evaluation of quotations, like the evaluation of proposals, is within the discretion of the procuring agency, since it is responsible for defining its needs and the best method of accommodating them, and must bear the results of a defective evaluation. *Orion Research, Inc.*, B-253786, Oct. 21, 1993, 93-2 CPD ¶242 at 3. Where an agency's technical evaluation is challenged, our Office will not independently weigh the merits of quotations or proposals; rather, we will examine the evaluation to ensure that it was reasonable and consistent with stated evaluation factors. *Integrity Private Sec. Servs., Inc.*, B-255172, Dec. 17, 1993, 93-2 CPD ¶332 at 3. A protester's mere disagreement with the agency's conclusions does not render them unreasonable. *Id.*

The technical evaluation here was unobjectionable. The agency reviewed the equipment listings of the systems being offered and concluded that the Solveteck solution employed a more user-friendly database software and was certified as being security compliant. The protester generally disagrees with the agency's conclusion that the protester's software database requires extensive expertise in MUMPS and maintains that some site managers have an excellent working knowledge of MUMPS. The protester further contends that the Solveteck security

compliance certification is meaningless. While the protester disagrees with the agency's findings with respect to the technical evaluation, the record here shows that throughout the evaluation process, the agency reasonably believed that the Solvetech system offered several advantages which made it a technically superior alternative. The protester's disagreement with this reasoned conclusion does not call it into question.